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CHINA: INTELLECTUAL PROPERTY RIGHTS

Issue

Although China has established a framework of laws and regulations to protect intellectual property rights (IPR) in line with the U.S. - China Memorandum of Understanding on Intellectual Property Rights, China's enforcement of these rules and regulations is sporadic at best and virtually non-existent for copyrighted works. Piracy continues to be rampant – particularly of copyrighted works and trademarks—and China also maintains a myriad of hidden quotas and non-transparent regulations that effectively keep U.S. intellectual property products out of the market. Despite acknowledgement at a policy level that IPR protection is essential to the healthy development of a market economy, China has taken few actions to effectively reduce piracy. As a result, on June 30, 1994, the United States Trade Representative (USTR) announced China's designation as a Priority Foreign Country and immediately initiated an investigation under section 301 of the Trade Act. As required by statute, USTR will request negotiations immediately with China to resolve these enforcement and market access issues.

Background

After discussions with the Chinese last year resulted in little movement in improving their IPR enforcement structure, the United States moved China to the IPR Priority Watch List in December 1993. On April 30, USTR announced that if a solution to U.S. concerns was not reached with China by June 30, China would be named a Priority Foreign Country and an investigation of its enforcement practices would immediately be initiated under Section 301 of the Trade Act. Although China could have been designated a Priority Foreign Country on April 30, Ambassador Kantor decided that U.S. interests would be best served by continuing the intense efforts already underway to address IPR problems. Inadequate progress by the June 30 deadline, however, resulted in China's designation as a Priority Foreign Country and the immediate initiation of a section 301 investigation.

Piracy is rampant in the audio/visual, computer software, and publishing sectors. Pirated videos, tape cassettes, compact disks (CD's), laser disks, computer games, computer software and manuals, books and magazines are omnipresent in China's commercial centers. Among the most egregious cases are the establishment of 26 CD and laser disk factories in central and south China. These factories, 15 of which came on line in 1993, produced approximately 50 million pirated CD's and laser disks for export to markets in Hong Kong and Southeast Asia and recently, Canada – markets in some instances that the United States and local governments worked together for many years to clean up. The worst offender, the Shenfei Laser Disk Optical Systems Company in Shenzhen – the Special Economic zone on Hong Kong's border – now exports pirated CD's and laser disks of such popular titles as *Jurassic Park*, *the Rocky Series*, and *Indecent Proposal*, in mass quantities.

Until we got China's attention by placing it on the priority watch list, it continued to deny that a piracy problem even existed. Based on recent consultations on IPR matters, the Chinese have taken virtually no action to date, and their promises remain thin – and

undocumented. China's only real commitment during consultations with the United States in June was to shut down six CD production lines. However, no commitment was made to shut down the Shenfei Laser Optical Systems Company, nor any of the other remaining infringing factories.

We have asked the Chinese to take action in three specific areas. China must: (1) take effective measures to curb IPR infringement, including taking action against the 26 CD factories; (2) agree to change the structure of its IPR regime; and (3) agree to provide a schedule expanding market access for intellectual property rights, especially in the audio/visual area.

China's State Council recently announced a bundle of Decisions with the intent of changing the structure of the IPR enforcement bureaucracy. Citing the need to make progress on IPR enforcement in order to join the GATT and ensure technological and scientific progress, the State Council has called for breaking down local protectionism; entering into structural reform by combining the resources of law enforcement and administrative departments; strengthening the customs administration role in IPR enforcement; and increasing propaganda and training more personnel. No details have yet emerged on the implementation of the State Council decisions, but even if implemented fully, it is unlikely that they would address all U.S. concerns with China's IPR regime.

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Talking Points
(for use in bilaterals with Chinese officials)

- The United States recognizes the significant steps China has taken in establishing a legal structure for intellectual property rights. However, despite a much improved legal regime, the Chinese government continues to tolerate rampant piracy of copyrighted works, trademarks, and occasionally, patented products.
- Piracy in China has reached crisis levels and is to the point where it is quickly becoming a serious obstacle to the expansion and improvement of our trade and commercial relationship.
- Rampant piracy acts as a market barrier for many of our leading industries, it dampens U.S. investment in China and is disruptive to China's technological and economic development.
- Lack of progress in the areas of enforcement and market access ultimately left the U.S. no choice but to designate China as a priority foreign country and to initiate a special 301 investigation of China's inadequate IPR enforcement practices earlier this summer. We remain committed to working constructively with China during the course of the investigation to resolve our differences.
- We are asking that China take three important steps to improve IPR enforcement: immediate measures to curb IPR piracy; the creation of an effective IPR enforcement regime; and the creation of open and non-discriminatory market access for persons who rely on intellectual property protection, including market access for audio visual and published works.
- The United States is encouraged by recent State Council decisions on changing the structure of China's IPR enforcement bureaucracy. However, we need to see effective implementation of these changes coupled with significant progress on the other enforcement issues, including the closure of all remaining infringing CD plants.
- The success of recent raids of several CD plants demonstrates that the Chinese government can crack down on copyright piracy if it chooses to make this commitment. We strongly encourage the Chinese government to do so as quickly as possible so that our two countries can mutually benefit from improved and expanded commercial ties.

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